

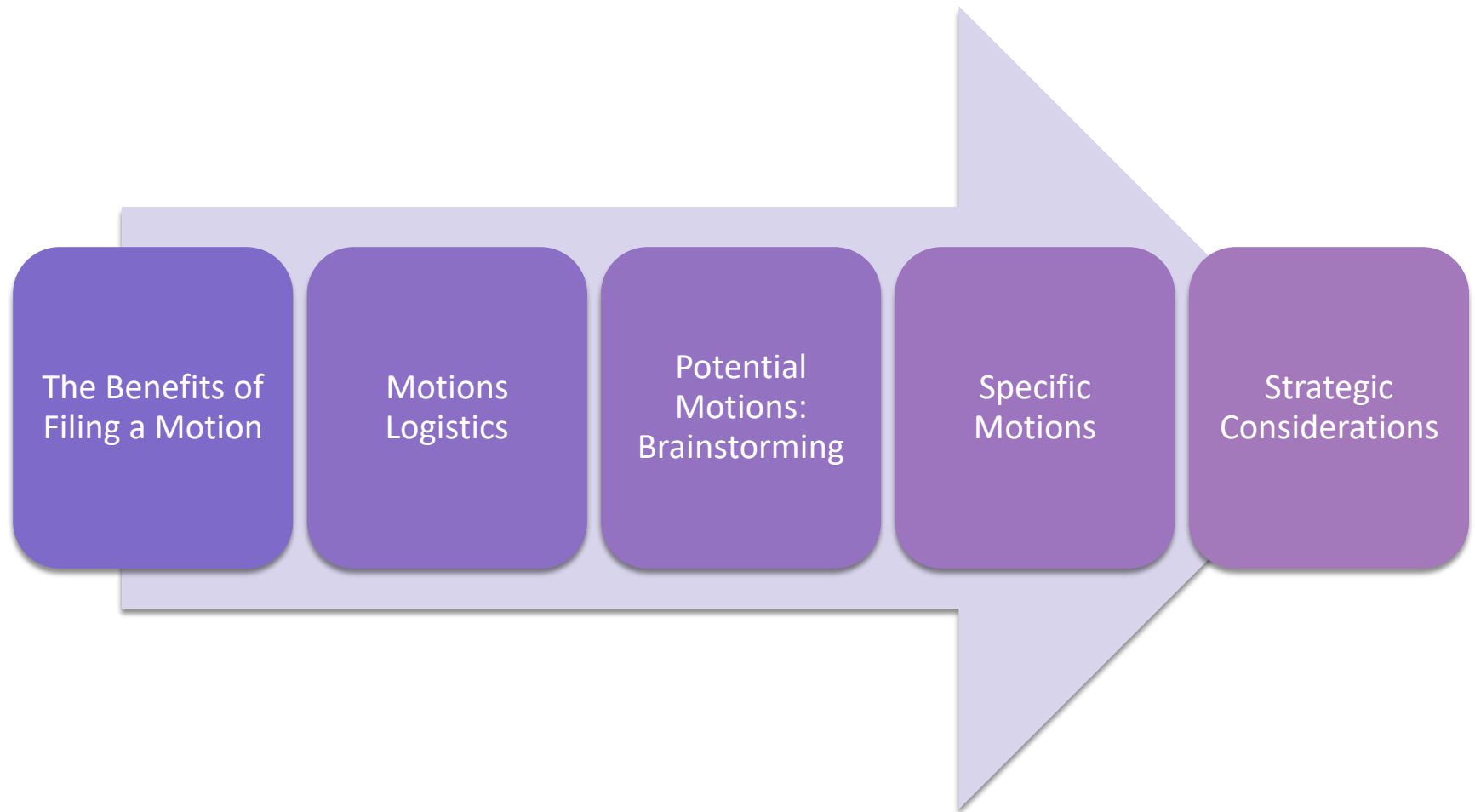
MOTIONS PRACTICE

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Motions Practice: Roadmap

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Why do we
file motions?



Motions: Why File?

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Forces you to fully develop your theory of the case

May lead to dismissal of the case

May weaken prosecution's case

- Keeps out information → better chance of prevailing in court
- Increases bargaining power → may lead to dismissal of some charges

Motions: Why file?

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Offers significant opportunities for discovery

- Preview of prosecutor's case
- Get a trial run at cross-examination of prosecutor's witness(es)
- Lock witness in to version of events (impeachable)

Strengthens attorney-client relationship and builds trust

Preserves issues for appeal

Challenges the status quo

Motions: Obstacles

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You want to do what?

- People think this is not “real court” (including your client)
- Role of everyone else is supposed to be different than yours
 - “best interest”
- The fact-finder is the same person as the motion-decider

Potential Motions

What motions
might be filed in
a juvenile case?



Motions to Consider

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Motion to Dismiss

Motion to Sever

- Counts
- Charges

Motion to Release

Motion to Alter Pretrial Conditions

Discovery / Investigation Motions

Motion to Rehear Referee's Order

Motions to Consider

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Motion to Suppress

- Evidence
- Statement
- Identification

Motion to Recuse Judge

- Bias
- Conflict of interest

Motions to Consider

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Motion for State Funds for Expert Assistance

Motions *In Limine*

Motion to Challenge Constitutionality of Statute

Motions to Consider

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BE CREATIVE!!!

Specific Motions



Motions to Dismiss

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A vertical list of five motions to dismiss, each preceded by a white circle with a blue outline. The circles are connected by a thin blue line that starts at the top and ends at the bottom. The text for each motion is contained within a colored rectangular box to the right of the circle.

- Deficiencies or jurisdictional defects of petition

- Statute of limitations

- Lack of proper notice or service

- Double jeopardy

- Duplicity or multiplicity of charges

Motion to Release / Alter Conditions

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Failure to
hold hearing
within
statutory
time limit

Unrepresented
at initial
hearing [Miss.
Code Ann.
§43-21-201]

Change of
circumstances to
warrant release

Delays by the
state

Favorable
pretrial rulings

Positive
performance in
detention center

Change of
circumstances to
warrant changing
conditions

Job

Participation in
pro-social
activities

Discovery Motions

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Motion to
compel discovery
[Miss. Code Ann.
§43-21-261]

- Upon request
- Any record, report, or investigation filed with youth court or to be considered by the youth court at a hearing
- Any law enforcement record

URYCP Rule 15

- (a)(1) Request for Discovery must be:
 - In writing, no less than 7 days before the hearing
 - Request triggers obligation of **RECIPROCITY**

Discovery / Investigation Motions

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Brady motion

Motion to preserve evidence / independent testing

Motion to dismiss the petition for failure to preserve evidence [DP violated by spoliation]

- 3 requirements under *Hardy v. State*, 137 So.3d 289, 297 (Miss. 2014):
 - (1) exculpatory value apparent before destruction
 - (2) defendant unable to reasonably obtain comparable evidence
 - (3) destruction in bad faith

Other sanctions for failing to preserve discovery

Sanctions for prosecutorial interference with investigation

- Prosecutor tells witness not to talk with defense attorney

Discovery / Investigation Motions

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Motion to View Scene

Motion for CPS, School, Juvenile Court,
Medical Records

- Complaining witness

Motion to Reveal Identity of Confidential
Informant

Rehearing a Referee's Order

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Miss. Code Ann. §43-21-111

- (1) In counties without family courts, the judge may appoint lawyers to act as referees in juvenile cases.
- (4) “A referee shall possess all powers and perform all the duties of the youth court judge...”
- (5) Motion for Rehearing of the Referee's Order
 - Any party may file a motion to rehear the referee's order.
 - Must be filed within 3 days after notice of referee's order. The judge may extend this time for good cause.
 - Also found in URYCP Rule 36

Motions to Suppress Evidence

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File in EVERY
drug case

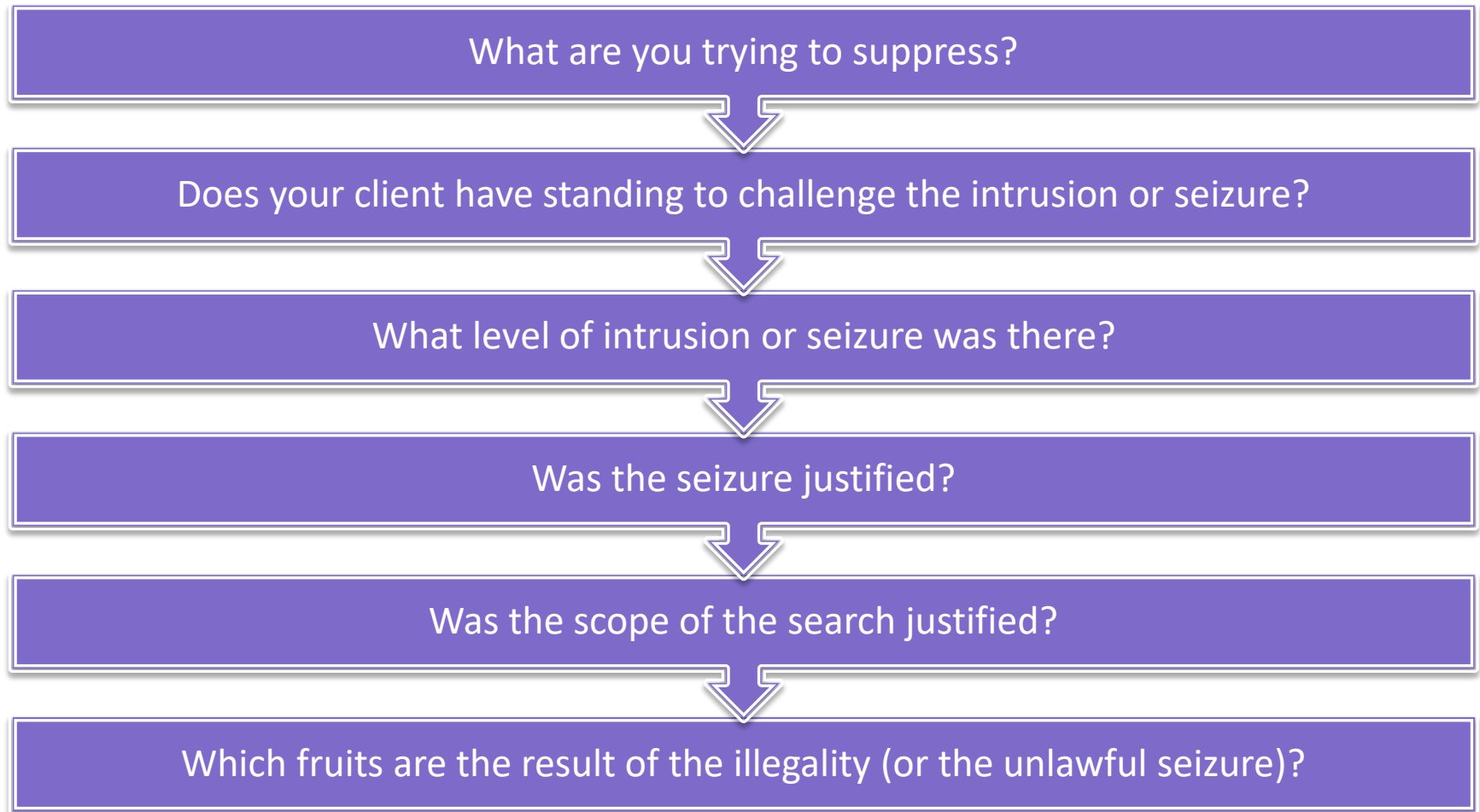
File EVERY time
physical evidence
is collected

File EVERY time
your client is
searched



MTS: Approach

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Motions to Suppress Statements

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File ANYTIME your client says anything to law enforcement



Voluntary AND
Knowing, Intelligent
and Voluntary
waiver

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?

Statements: Issue Spotting

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VOLUNTARY

- Coercion
 - Threats / brutality
 - Length of interrogation
 - Did the child's age make him susceptible to coercion?
 - Did officials exploit the child's mental impairment to elicit the statement?
- Influence of Drugs / Alcohol
- Promises
- *Lack of Miranda during **custodial** interrogation*
- School Setting?

Statements: Issue Spotting

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Knowing, Intelligent and Voluntary?

- Totality of Circumstances [Brown v. State, 130 So.3d 1074, 1079 (Miss. 2013)]
 - All circumstances surrounding the interrogation, including the juvenile's age, experience, education, and, intelligence
 - Capacity to understand Miranda warnings and consequences of waiver
 - Familiarity with Miranda warnings or ability to read and write in the language used in the warnings
 - Intoxications
 - Mental disease, disorder or retardation

Parental notice of custody

- continuing reasonable efforts

Motions *In Limine*

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Motions to
exclude evidence
as:

- Irrelevant
- More prejudicial than probative
- Unreliable

Check documents
in discovery for
facts, statements,
references to:

- your client's history
- things that reflect poorly on your client's character
- hearsay

Strategic Considerations

Pretrial v.
Contemporaneous
Objection at Trial?



Pretrial

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Earlier adjudication of
issues raised

Possible dismissal

Suppression of key
evidence may be
dispositive

Success may weaken
case, increasing
leverage

Obtain discovery

Pin down witness
testimony /
impeachment

Reading on the judge

If the issue is legal /
technical, may make
things cleaner, which
may lead to a better
outcome

Notice to judge /
prosecutor that will be
litigating the case

Contemporaneous

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May be more compelling in the context of trial than in isolation

May prevent prosecutor from obtaining appellate review on a favorable ruling

Jeopardy attaches

Avoids giving the prosecutor a preview of the defense

May avoid raising an issue that is potentially damaging and that may not come out at trial

(State may not introduce the evidence you are considering objecting to through a motion *in limine*)

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Motions Logistics

Statutory Requirements

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URYCP Rule 15(c)(1)

- All motions must be filed within 5 days of the hearing

URCCC Rule 4.02

- Requires motion in writing, and an accompanying proposed order for any ex-parte motion

Structure of Motions

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Caption



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graph TD; A[Caption] --> B[Introduction]; B --> C[Procedural History]; C --> D[Statement of Relevant Facts]; D --> E[Argument & Citation of Authority];
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Introduction

Procedural History

Statement of Relevant Facts

Argument & Citation of Authority

Structure of Motions (2)

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Reservation of Rights



Conclusion/Prayer for Relief



Certificate of Service



Proposed Order



Rule Nisi / Scheduling Order

Particularizing Motions

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Reveal enough facts and argument to proceed

Include grounds for motion and relief sought

Include case references/memorandum of law

File amended motions prior to hearing date

Motions Hearings

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Know when you have the burden of proof

Know what the burden/standard is

Present evidence/call witnesses

Have case law with you and copied for judge

Preserve the record for appeal

Bring a proposed order with you

Preserving the Record

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File written motions when possible

Ensure that all proceedings are recorded

Make offers of proof of facts that the court refused to consider or admit

Make sure that the judge rules on every motion (and objection)

If new evidence comes to light, move to re-open or reconsider the earlier denial

If pre-trial, re-object during trial

Cite both federal and state grounds for a motion

Questions?

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